***THE HONOURABLE SRI JUSTICE A.GOPAL REDDY**

+WP No.24187/1995

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% Eighteenth day of March, Two Thousand Six

M/s. Kalpana Theatre, Vizianagaram, represented by its Managing Partner Dr. B.Kalavathi, 52 years, Vizianagaram

..Petitioner

Vs.

$ 1.The Joint Collector, Vizianagaram and others. ..Respondents

! Counsel for the petitioner Sri Krishna Mohan Rao,

^ Counsel for the respondents: G.P.for Revenue

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>Head Note

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ORAL ORDER

Challenge is made to the order passed by the Joint Collector, Vizianagaram, licensing authority under A.P. Cinema (Regulation) Rules, 1970 imposing a fine of Rs.10,000/- on the petitioner-cinema theatre in terms of Section 9 of A.P. Cinemas (Regulation) Act, 1955 (for short “the Rules”), for running the theatre without valid licence and certificate from 1-1-1995 to 20-2-1995, in the present writ petition.

The facts which are not in dispute and relevant for disposal of the writ petition are as under: The petitioner-cinema theatre obtained B-Form licence, which was renewed from time to time. It applied for renewal of licence on 11-7-1994 upto 30-6-1997 by remitting an amount of Rs.375/- by way of challan No.661dt. 11-7-1994. The second respondent, Revenue

Divisional Officer, Vizianagaram, renewed B-form licence upto 31-12-1994 as Management had produced electrical certificate which is valid upto 31-12-1994 and directed the Management to apply for further renewal well in advance vide RC No.4638/93-H dt. 9-8-1994. On petitioner producing electrical and fire certificates, valid upto 31-12-1995, licence was renewed from 28-2-1995 to 31-12-1995. Since during the interregnum period ie., from 1-1-1995 to the date of commencement of renewal ie., 28-2-1995 the petitioner run the theatre without valid certificate, a show cause notice dt. 7-5-1995 was issued calling its explanation. On petitioner submitting explanation, the impugned order came to be passed by the Licensing Authority. Challenging the same, the present writ petition has been filed contending that once application filed on 11-7-1994 seeking renewal of B-Form licence upto 30-6-1997, the Licensing Authority ought to have renewed licence upto 30-6-1997 but not from 28-2-1995 till 31-12-1995. As per proviso-4 to Rule 12-B, if the Licensing Authority does not either renew or refuse to renew or return for reasons to be recorded in writing before the date of expiry of the licence, he shall grant a temporary permit in Form-C and as per sub-Rule 7(b) of Rule 13 which contemplates that in case no such permit or order of refusal is received before the date of expiry of the licence, the licensee shall be deemed to be a valid holder of licence, therefore imposing penalty on the management of the petitioner-theatre is arbitrary and illegal and the same is liable to be dismissed

It is not in dispute against any such order passed by the Licensing Authority, an appeal lies to the Government, but the petitioner without availing alternative remedy, straight away invoked the extra-ordinary jurisdiction of this court under Art. 226 of the Constitution of India.

Learned counsel for the petitioner while reiterating the pleas taken in the writ petition submits that under sub-Rule 7(b) of Rule 13, if the application filed for renewal has not been refused before expiry of licence, the licensee shall be deemed to be a valid holder of licence and the same has not been properly considered by the licensing authority while passing the impugned order, therefore the same is liable to be dismissed.

The averments made in the counter-affidavit, namely, granting licence by the Revenue Divisional Officer on the renewal application made by the petitioner-theatre dt. 11-7-1994 licence upto 31-12-1994 as the management has produced electrical certificate which is valid upto 31-12-1994 and issuing direction to the management to apply for further renewal well in advance through letter in RC No.4638/93 dt. 9-8-1994 have not been denied by the petitioner.

It is necessary to have a glance of proviso 4 to Rule 12(B) (1) and sub-rule (7)(b) of Rule

12, which read as under:

12(B). **Renewal of Licences to cinema buildings:**

1. Within fifteen days of receipt of such application, the licensing authority shall:

a. and (b) x x x x x

x x x x x x;

Provided also that in respect of a permanent cinema building, if the licensing authority does not either renew or refuse to renew or return for reasons to be recorded in writing before the date of expiry of the licence, he shall grant a temporary permit in Form 'C' provided that the Electrical Inspector's Certificate continues to remain valid or has been deemed to have been renewed under the first proviso to sub-rule (1) or the licensed contractor's certificate furnished by the applicant is accepted, and that the fees prescribed under Rule 16 has been paid and the application has been made three months before the expiry of the Electrical Inspector's Certificate.

13. Licences and temporary permit and their periods:

(7) (a) x x x (omitted by G.O.Ms. No.620 dt. 31-12-1983)

b. In case no such permit or order of refusal is received before the date of the expiry of the licence, the licensee shall be deemed to be a valid holder of licence.

Once Revenue Divisional Officer based on the renewal application filed by the petitioner-theatre on 11-7-1994 renewed B-Form licence till 31-12-1994 as the electrical certificate was valid upto 31-12-1994, the petitioner cannot claim any benefit of the provisions as quoted above. Moreover when electrical certificate is valid upto 31-12-1994; petitioner was directed to apply for further renewal well in advance; after obtaining necessary electrical and fire certificates, which were admittedly granted from 28-2-1995 to 31-12-1995 and licence was also renewed based on the said certificates, the petitioner cannot avail the benefit of deemed provision as per sub-rule (7)(b) of Rule 13.

In view of the same, the impugned order does not suffer from any manifest illegality or infirmity warranting interference by this court under Art. 226 of the Constitution.

The writ petition is accordingly dismissed. No costs.

18-3-2006

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